



**Osoro Omwoyo t/a Osoro Omwoyo Co.Advocate v Kateregga & another
(Miscellaneous Application E103 of 2021) [2021] KEHC 396 (KLR)
(Commercial and Tax) (17 December 2021) (Ruling)**

Neutral citation: [2021] KEHC 396 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E103 OF 2021
A MABEYA, J
DECEMBER 17, 2021**

BETWEEN

OSORO OMWOYO T/A OSORO OMWOYO CO.ADVOCATE APPLICANT

AND

BADRU D. KATEREGGA 1ST RESPONDENT

KAMPALA UNIVERSITY LTD 2ND RESPONDENT

RULING

1. This is a Notice of Motion brought under Order 21 Rule 9 (1) (c) of the *Civil Procedure Rules* and Paragraph 11(2) of the Advocates (Remuneration) Order, Section 3 and 3A of the [Civil Procedure Act](#).
2. The application sought judgement against the respondents for a sum of Ksh. 1,793,979/= and an order for interest of 12% p.a on the said sum with effect from 22/1/2021 until payment in full.
3. The grounds for the application are that the applicant's costs were assessed at Ksh. 1,793,979/=; that it is a legal requirement for a party in whose favour a Certificate of Costs has been issued to request for judgment to be entered prior to the commencement of execution.
4. The 1st respondent opposed the subject application vide a replying affidavit sworn on 24/3/2021.
5. He averred that he is one of the directors of the 2nd respondent; that there was never a resolution to appoint the applicant as its advocate; that the award by the taxing master is highly exorbitant and the taxing master did not give reasons for the specific amount awarded to the advocate; that separate bill of costs ought to have been filed against each respondent separately as they are distinct legal persons capable of being sued on their own.



6. That the ruling on the advocate/client bill of costs was delivered in the absence of the respondents therefore they were unable to pray for stay or file an objection to the taxation. That however the respondents were willing to pay as ordered by the court through monthly instalments of Ksh.100,000/= as the 2nd respondent has been undergoing financial difficulty due to Covid 19 which led to its closure for 6 months.
7. The issue for determination is whether judgement should be entered against the respondents for a sum of Ksh.1,793,979/= pursuant to the ruling on advocate-client bill of costs dated 21/1/2020 and the certificate of taxation issued on 11/2/2021.
8. The ruling on the advocate/client bill of costs is annexed as 'OKO-1' and the Certificate of Taxation as 'OKO-2' in the supporting affidavit sworn by the applicant on 12/2/2021.
9. The respondents objection is on the basis that the applicant was not validly appointed by the 2nd respondent; that the taxed amount is exorbitant with no reasoning given for the specific amount granted and that a separate bill of costs ought to have been issued as the respondents are two distinct entities.
10. Despite posing the above opposition, the respondents also averred that due to the amount being huge they should be allowed to pay the same in instalments.
11. Section 51(2) of the Advocates Act provides:-

“The certificate of the taxing officer by whom any bill has been taxed shall, unless it is set aside or altered by the Court, be final as to the amount of the costs covered thereby, and the Court may make such order in relation thereto as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs.”
12. The court notes that from 21/1/2020, the respondents have not challenged the bill of taxation in any court of law. Further that the respondents have agreed to pay the taxed sum which only goes to show that indeed an advocate-client relationship existed between the parties.
13. It seems to the court that the respondents are merely seeking to pay postpone their obligation by having the taxed costs paid in installments.
14. As such, in accordance with section 51(2) of the Advocates Act, the court finds no reason not to enter judgment against the respondents for a sum of Ksh.1,793,979/= as prayed.
15. The application dated 12/2/2021 is therefore meritorious and is granted as prayed.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF DECEMBER, 2021.

A. MABEYA, FCI Arb

JUDGE

